

**CITY OF NEWTON
PURCHASING DEPARTMENT**

CONTRACT FOR HUMAN RESOURCES

REQUEST FOR PROPOSAL:

**FLEXIBLE SPENDING
ACCOUNT PLAN ADMINISTRATION**

RFP #12-20

Submittal Date: October 21, 2011 at 10:00 a.m.

OCTOBER 2011

Setti D. Warren, Mayor

CITY OF NEWTON, MASSACHUSETTS

PURCHASING DEPARTMENT

purchasing@newtonma.gov

Fax (617) 796-1227

October 17, 2011

ADDENDUM #1

REQUEST FOR PROPOSAL #12-20

FLEXIBLE SPENDING

THIS ADDENDUM IS TO: **Answer the following Questions:**

Q1. (Page 10 question #9). It is asking for a minimum of 4 contracts, however it is asking for a “date completed” and in our line of work our services are ongoing, so our contracts have not yet completed. If it is “completed” than they are no longer a client. Can you please advise how you would like this completed. Additionally, I am assuming this question has no relationship to the question on page 5 regarding references.

A1. Please disregard the line that says “date completed” if it does not apply. Thank you.

Q2. Looking at the timeframe of award and the plan start date of 1/1/2012, will the new TPA be responsible for attending open enrollment meetings and/or benefit fairs for this plan year or next?

A2. We would like someone to come in one afternoon to do a “walk-in” session for our employees to answer any questions they may have. Our benefits fair is in April, it would optional for the company to attend if they would like.

Q3. Is the City currently using a debit card? If so, is there a separate fee to the City or participants for this or is it included in the current PPPM fee?

A3. We are NOT currently using a debit card.

Q4. Why is the City going out to bid again?

A4. To add in the debit card criteria.

Q5. Can we get a word version of the RFP?

A5. No.

Q6. Will there be finalist interviews between the top candidates?

A6. As stated in the RFP on page 3, an interview may be required as part of the evaluation of the proposals.

Q7. Will the current TPA be given any advantage in the RFP process such as a chance to submit a Best & Final offer or to match another proposers pricing or service deliverables?

A7. No

All other terms and conditions of this bid remain unchanged.

PLEASE ENSURE THAT YOU ACKNOWLEDGE THIS ADDENDUM ON YOUR BID FORM.

Thank you.



Rositha Durham

Chief Procurement Officer

CITY OF NEWTON, MASSACHUSETTS

PURCHASING DEPARTMENT

REQUEST FOR PROPOSAL NO. 12-20

FLEXIBLE SPENDING ACCOUNT PLAN ADMINISTRATION

DECISION TO USE COMPETITIVE SEALED PROPOSALS

The Chief Procurement Officer has determined that in order to select the most advantageous proposal for Flexible Spending Account Plan Administration for the City of Newton Human Resources Department, comparative judgments of technical factors, in addition to price, will be necessary. This proposal is being sought to insure that the best services available for flexible spending are received by the City and its employees at competitive costs.

INTRODUCTION

Services to be covered include assistance to the City of Newton Human Resources Department in the administration of a Flexible Spending Account (FSA) for eligible City of Newton employees. The Flexible Spending Account Plan will have two components: A qualified health care reimbursement account component, and dependent care assistance plan component. The City self-administers an insurance premium conversion plan, and this plan is excluded from this proposal request. The proposal request is for services only. The successful proposer cannot offer to City of Newton employees, directly or indirectly, any other financial service or product as a result of being awarded this contract. The names of City employees and those participating in the FSA cannot be used for solicitation purposes or sold. The administration of the flexible spending account shall consist in the adjudication and processing of claims and reimbursement of funds to participants who sign up for this plan.

- A. **GOVERNING LAW and DEADLINE FOR SUBMISSION:** All proposals must be submitted in accordance with Massachusetts General Laws Chapter 30B, § 6, to the Chief Procurement Officer in the Purchasing Department, Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459 **NO LATER THAN 10:00 a.m. October 21, 2011.** **Proposals must be submitted in two separate sealed envelopes, one marked “Technical Proposal” the other marked “Price Proposal”. Price Proposals shall NOT be submitted with Technical Proposal. Any Technical Proposal containing any part of a Price Proposal shall be deemed non-responsive.**

Three (3) copies of the Technical Proposal must be submitted in a sealed envelope, plainly marked:

Technical Proposal, RFP #12-20 - “Flexible Spending Account Plan Administration”
along with your company name on the front of the envelope.

Addendums must be acknowledged on the Technical Proposal form. Any proposal without an acknowledgement on the Technical Proposal form may be rejected as non-responsive.

One (1) copy of the Price Proposal must be submitted in a sealed envelope, plainly marked:

Price Proposal, RFP #12-20 - “Flexible Spending Account Plan Administration”
along with your company name on the front of the envelope.

Faxed proposals shall not be accepted.

Proposals will not be opened publicly. Proposal contents will be kept confidential and not disclosed until after the evaluation and award. A listing of proposers will be available online at: www.ci.newton.ma.us/bids.

The submission proposals must be addressed to:

City of Newton
Purchasing Dept. – Room 204
Attn: Rositha Durham, CPO
1000 Commonwealth Ave.
Newton, MA 02459

Proposals received after the deadline will not be considered. The name of all parties submitting proposals will be recorded but no proposal content will be made public until the City has completed the evaluation of the submittals.

- B. QUESTIONS: Inquiries involving procedural or technical matters shall be in writing no later than Friday, October 14, 2011 at 12:00 noon to purchasing@newtonma.gov or faxed to:
Rositha Durham, *Chief Procurement Officer*
City of Newton, Purchasing Department
1000 Commonwealth Avenue
Newton, MA 02459
(617) 796-1227
- C. EXAMINATION OF DOCUMENTS: Each proposer shall be satisfied as to the requirements of the contemplated services to enable the intelligent preparation of this proposal. The proposer shall be familiar with all RFP Documents before submitting the proposals in order that no misunderstanding shall exist in regard to the nature and character of the contemplated services to be performed. No allowance will be made for any claim that the proposal is based on incomplete information. Any questions must be submitted in writing to the Chief Procurement Officer at the above address, by email to purchasing@newtonma.gov or may be faxed to 617-796-1227.
- D. EVALUATION OF PROPOSALS: The Technical proposals shall be evaluated by the Human Resources Department. They shall prepare their evaluation based on the criteria contained herein. An interview may be required as part of the evaluation of this proposal.
- E. The contract award will be made within 30 days, only to a responsive and responsible proposer who is determined to be the most advantageous taking into consideration evaluative criteria and is capable of performing the services contemplated and meeting the minimum criteria set forth in the RFP. Each proposal will be screened in order to determine whether it meets all of the proposal submission requirements as described in the RFP.

THIS SPACE INTENTIONALLY LEFT BLANK

SCOPE OF WORK

PLAN TO BE COVERED:

A Flexible Spending Account Plan has been offered for the past twelve years. The current administrator is Cafeteria Plan Advisors of Braintree, MA. The Flexible Spending Plan should accommodate all legally permissible categories of expenditure including, but not limited to, the following:

Qualified Health Care Reimbursement Account

- Medical Insurance Deductibles
- Co-payments
- Vision Care (eyeglasses, contact lenses, examinations)
- All medical procedures not covered by insurance
- All dental procedures not covered by insurance

Dependent Care Assistance Plan

- All expenses qualified under Sections 125 and 129 of the Internal Revenue Code, and any other Sections of the IRS code or other statute pertaining to payment of dependent care expenses on a pre-tax basis.

The City also has a premium only 125 plan, which is not included in this proposal.

COVERED EMPLOYEES:

- The City of Newton has twenty four hundred (2,400) benefits eligible employees.
- Most employees are included in one of seventeen collective bargaining units.
- All unions have bargained for this benefit.

CURRENT ENROLLMENT and COSTS:

The City currently has about 400 employees who participate in Flexible Spending. The City currently contracts with Cafeteria Plan Advisors and pays \$4.00 per person per month, and has no expenses for its annual renewal and no costs associated with discrimination testing. The City is exempt from ERISA and does not require the preparation of Form 5500.

SERVICES OUTLINE:

The successful bidder will:

1. Provide all necessary plan documents
2. Provide all descriptive literature
3. Receive and process all claims
4. Determine and administer employee reimbursements
5. Provide points of contact for employees to call regarding questions, information, etc.
6. Provide the City of Newton with reports necessary for the administration of the Flexible Spending Account Plan, including: 1) periodic reports by employee showing amounts credited to the employees account, the amount paid from the account, and the account balance; 2) an end-of-plan-year report showing, by employee, amounts left unexpended; and 3) other reports commonly provided
7. Provide individual subscribers with reports, at least twice per year, showing amounts credited to individual accounts, claims received, payments made, and account balance
8. Provide other reports, services, etc. typically required in the administration of Flexible Spending Account balance
9. Provide discrimination testing once a year

BACKGROUND INFORMATION:

In regard to #2 above the City prepares its own materials for distribution. The City needs 5 copies of the vendor's literature in order to prepare its materials. The City will work with the vendor to develop enrollment forms, direct deposit forms, etc. that are mutually acceptable. The literature can be 5 hard copies, or electronic copies, which the City can use to create hard copies. The City is not seeking customized literature.

In regard to #7 above, real time information provided on the vendor's website will fulfill this requirement.

Currently the City emails or faxes enrollment forms to the vendor. If the awarded vendor prefers a Word or Excel file, that can be arranged. The City will only accept one of these arrangements to set up the vendor's database.

The City has had different funding arrangements with different vendors over the years. With the current vendor, for each weekly and semi-monthly payroll, the City E-Mails the deduction register and sends the funds via ACH. In the past, the vendor notified the City of the approved claims each week, with a listing of employees and amounts to be paid, and the City sent an ACH transfer to the vendor.

INFORMATION TO BE SUBMITTED WITH PROPOSALS:

1. A list of at least six (6) client references with whom the proposer has had contracts over the last three current (3) years. Information should include a contact person and telephone number, and the date the contract began and ended. Identify all clients with twelve hundred (1200) or more employees.
2. A description of all services that would be provided by your company under this proposal. Do you have insurance and/or bonding of your staff to guarantee the safety of our funds? If so, to what extent are you insured and/or bonded?
3. Copies of sample reports regularly made to employers and employees and copies of reimbursement forms to be used by employees. What is the frequency of these reports? Also list the cost schedule for customized reports.
4. Please list the number of Flex Plans that your company services, and the average number of employees per plan. How many years has your company been providing this service?
5. A description of the communications system that you use to allow our employees to receive information on their Flex Plan(s). Include type of phone, Internet, or other network systems utilized, the hours live operators are available, and the hours that an automated or voice mail information system is available. What, if any, Internet access is available to either employees or employer? Can employees track their balances on-line?
6. Assurance that you have the personnel available to handle enrollment. Please provide a sample of your implementation schedule, enrollment procedures, and employee communication materials.
7. Do you do annual discrimination testing? How is it done?
8. Resumes of key personnel, who will direct, oversee and provide service for the City of Newton account.
9. Please indicate any reservations or qualifications you may have concerning the fulfillment of this proposal.
10. Cover/Transmittal sheet acknowledging any/all addendum.
11. Quotes on a debit card for enrollees.

END OF SECTION

MINIMUM CRITERIA

All proposals must have a section in their proposal labeled MINIMUM CRITERIA and must provide all necessary documentation as evidence that they meet each of the following minimum criteria in order to be considered for further evaluation:

1. Proposers must be in the business of administering Flexible Spending Account Plans and have at least five (5) years experience in such business.
2. Proposers must have experience administering Flexible Spending Account Plans for four (4) or more clients, all of which have twelve hundred (1200) or more employees.

COMPARATIVE EVALUATION CRITERIA (Listed in Order of Priority)

The City of Newton will use the following criteria to evaluate the technical proposals. All proposals will be reviewed by the Human Resources Department. Please provide information and supporting documents so that your proposal can be evaluated according to these criteria. Documentation to the following questions will be evaluated as follows:

HA - Highly Advantageous

A - Advantageous

NA - Not Advantageous

U - Unacceptable

- 1.) The number of clients with 1200 or more employees.
 - HA - Five or more clients with 1200 or more employees
 - A - Four clients with 1200 or more employees
 - NA - Less than four with 1200 or more employees or four clients but with less than 1200 employees
 - U - Less than four clients with less than 1200 or more employees
- 2.) The number of years that the bidder has been administering Flexible Spending Plans.
 - HA - Over Five years
 - A - Five years
 - NA - Four - Five years
 - U - Less then four years
- 3.) Processing of Dependent Care Claims.
 - HA - Provides a method for participants to sign up once and not have to submit periodic receipts.
 - A - Participants have to submit periodic receipts to receive payments.
- 4.) Turnaround time for processing properly submitted claims.
 - HA - Claims are processed weekly
 - A - Claims are processed every two weeks
 - NA - Claims are processed twice per month
 - U - Claims are processed once a month
- 5.) Number of days between receiving a properly submitted claim and member reimbursement.
 - HA - Three business days
 - A - Five business days
 - NA - Seven business days
 - U - Ten Business days
- 6.) Method of Data Transmission.
 - HA - Accepts Data Transmission of weekly payroll deductions via e-mail.
 - A - Accepts Data Transmission of weekly payroll deductions via fax.
 - NA - Requires the City to modify electronic transmission of data files
 - U - Does not accept data transmissions of weekly payroll deductions electronically

7.) Reference Checks.

HA – 2 or more of the satisfied references were highly satisfied with customer service and claim payment time

A – All four references were satisfied with customer service and claim payment time

NA - 1 reference was not satisfied with customer service or claim payment time

U – 2 or more references were not satisfied with either customer service or claim payment time

8.) Live Customer Service personnel available for employees to seek help with claims and answers to questions.

HA - Live operators available for extended weekday business hours (such as 7am to 9pm) or partial weekend coverage (such as Saturdays 9am to 1pm)

A - Live operators available during normal business hours (Mon - Fri 8:30 a.m. to 5:00 p.m. EST).

NA - Automated answering system to a live customer service representative during normal business hours

U - Automated answering system to a voice mail system

PLAN COSTS

Proposers must quote the costs in all four categories listed in the pricing proposal provided in this package. Costs quoted should reflect the actual cost of services during the three-year period.

The initial start up costs should include costs associated with the preparation of the plan document, preparation of plan descriptive literature, and any other expenses associated with initial start up of the plan.

The monthly cost per person/per account should include costs associated with the receipt, accounting for, and disbursing of funds, reporting of all transactions in usual formats, client/ customer service, all normal reports, postage, and any other expenses associated with the provision and maintenance of employee accounts. The costs should also include a monthly fee for a debit card.

The annual renewal expenses should include the cost of processing all applications and setting up records for all enrollees at the beginning of the plan year, and all other expenses related to the annual enrollment.

CONTRACT PERIOD

The contract period shall be from **January 1, 2012 through December 31, 2012** with an option to renew for two (2) additional one-(1) year terms with no change to the proposal prices. This option is to be exercised at the sole discretion of the City.

CONFIDENTIALITY & OTHER CONDITIONS

Medical claims processing must be confidential, and no information shall be transmitted to the City of Newton, or any other party, except the employee, that indicates the nature of any claim without the written authorization of the employee. Notwithstanding the foregoing, the City of Newton or its designee shall have access to all records for the purpose of auditing reimbursements in the detection and prevention of fraud.

END OF SECTION

CITY OF NEWTON
DEPARTMENT OF PURCHASING
PRICE PROPOSAL #12-20

- A. The undersigned proposes to supply the services specified below in full accordance with the Contract Documents and Project Manual supplied by the City of Newton entitled:

FLEXIBLE SPENDING ACCOUNT ADMINISTRATION

for the contract price(s) specified below, subject to additions and deduction according to the terms of the specifications.

- B. This bid includes addenda number(s) _____, _____, _____, _____,

- C. The proposed contract price is:

1. INITIAL ONE TIME START UP COST \$ _____

2. MONTHLY COST PER PERSON

	Unit Cost	Est. Qty	Annual Cost for 2012	2013	2014
Health Care Acct.	\$	400	12 months	\$	\$
		500-700			
		700+			
Dependent Care Acct.	\$	400	12 months	\$	\$
		500-700			
		700+			
Other Costs -Debit Cards	\$	400	12 months	\$	\$
		500-700			
		700+			

3. ANNUAL RENEWAL EXPENSES None \$ _____ \$ _____

4. ANNUAL DISCRIMINATION TESTING \$ _____ \$ _____ \$ _____

TOTAL ANNUAL CONTRACT PRICE \$ _____ \$ _____ \$ _____

(Please specify)

Please indicate if you charge separately if a person has both
 Health Care & Dependent accounts Yes _____ No _____

COMPANY: _____

CONTACT: _____ **PHONE#** _____

D. The undersigned has completed and submits herewith the following documents:

- ☐ Bidders Qualifications and References Form, 2 pages
- ☐ Certificate of Non-Collusion, 1 page
- ☐ Signed Price Proposal, 2 pages

D. The undersigned agrees that, if selected as contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the City of Newton, execute a contract in accordance with the terms of this bid. The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that s/he will comply fully with all laws and regulations applicable to awards made subject to M.G.L. Chapter 30B.

The undersigned further certifies under the penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this section the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from public contracting or subcontracting in the

Commonwealth under the provisions of M.G.L. Chapter 29, Section 29F or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____

(Name of Bidder)

BY: _____

(Printed Name and Title of Signatory)

(Business Address)

(City, State Zip)

(Phone / FAX)

(Email Address)

NOTE: If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address; and, if operating as a d/b/a give full legal identity. Attach additional pages as necessary.

END OF SECTION

CITY OF NEWTON

BIDDER'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City of Newton for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____
2. WHEN ORGANIZED: _____
3. INCORPORATED? ____ YES ____ NO DATE AND STATE OF INCORPORATION: _____
4. IS YOUR BUSINESS A **MBE**? ____ YES ____ NO **WBE**? ____ YES ____ NO or **MWBE**? ____ YES ____ NO
- * 5. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

- * 6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?
____ YES ____ NO
IF YES, WHERE AND WHY?

- * 7. HAVE YOU EVER DEFAULTED ON A CONTRACT? ____ YES ____ NO
IF YES, PROVIDE DETAILS.

- * 8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:

- * 9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: _____

OWNER: _____
CITY/STATE: _____

DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Newton in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: _____ BIDDER: _____

SIGNATURE: _____

PRINTED NAME: _____ TITLE: _____

END OF SECTION

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

(Signature of individual)

Name of Business

CITY OF NEWTON, MASSACHUSETTS

PURCHASING DEPARTMENT

GENERAL TERMS AND CONDITIONS

1. The right is reserved to reject any and all bids, in whole or in part, to waive informalities, and to make award as may be determined to be in the best interest of the City of Newton.
2. Prices quoted must include delivery to the City , as specified on the Purchase Order.
3. No charges will be allowed for packing, crating, freight, Express or cartage unless specifically stated and included in the bid.
4. The award to the successful bidder may be canceled if successful bidder shall fail to prosecute the work with promptness and diligence.
5. Time in connection with discount offered will be computed from the date of delivery to the City, as specified on purchase order, or from date correct invoice is received by the City, if the latter date is later than the date of delivery.
6. The successful bidder shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of articles furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Seller.
7. The Seller shall indemnify and save harmless the City and all persons acting for on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Seller, within a reasonable time, will at it's expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment or apparatus, and refund the sums paid therefor.
8. The successful bidder shall comply with all applicable Federal State and Local laws and regulations.
9. Purchases made by the City are exempt from Federal excise taxes and proposal prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.
10. If so stated in the Request for Proposal, the successful bidder will be required to furnish a performance and/or a labor and material payment bond, in an amount, in a form and with a surety satisfactory to the City. The bidder shall be responsible for the cost of the bond(s).
11. If the Request for Proposal requires bid surety, this surety shall be in the form of a cash, bid bond, cashier's check, treasurer's check, or certified check on a responsible bank, payable to the City of Newton, and must be filed with the original proposal in the Office of the Purchasing Agent. Failure to do so will lead to rejection of proposal. The bid surety will be returned to the successful bidder within seven (7) days execution of awarded, and approval by the City of performance and/or payment bond(s). In case of default, the bid surety shall be forfeited to the City.
12. Verbal orders are not binding on the City and deliveries made or work done without formal Purchase Order or Contract are at the risk of the Seller or Contractor and may result in an unenforceable claim.
13. The Seller shall agree to indemnify, defend and hold the City harmless from any and all claims arising out of the performance of this contract.
14. "Equality - An item equal to that named or described in the specifications of the contract may be furnished by the Vendor and the naming of any commercial name, trademark or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition but shall establish a standard of equality only. An item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the work being contracted for or the

material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. The name and identification of all materials other than the one specifically named shall be submitted to the City in writing for approval, prior to purchase, use or fabrication of such items. Subject to the provisions of M.G.L., Ch. 30, Sec. 39J, approval shall be at the sole discretion of the City, shall be in writing to be effective, and the decision of the City shall be final. The City may require tests of all materials so submitted to establish quality standards at the Vendor's expense. All directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment and operation of their equipment shall be complied with; responsibility for proper performance shall continue to rest with the Vendor.

For the use of material other than the one specified, the Vendor shall assume the cost of and responsibility for satisfactorily accomplishing all changes in the work as shown. If no manufacturer is named, the Vendor shall submit the product he intends to use for approval of the City.

Except as otherwise provided for by the provisions of M.G.L., Ch. 30, Sec. 39J, the Vendor shall not have any right of appeal from the decision of the City condemning any materials furnished if the Vendor fails to obtain the approval for substitution under this clause. If any substitution is more costly, the Vendor shall pay for such costs."

15. Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan dated December 1999 is applicable to all City of Newton contracts for materials and supplies. A copy of this plan may be obtained from the Purchasing Department.

16. Right To Know:

Any vendor who receives an order or orders resulting from this invitation agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to M.G.L., Ch. 111F, SS8, 9 and 10 and the regulations contained in 441 CMR SS 21.06 when deliveries are made. The vendor agrees to deliver all containers properly labeled pursuant to M.G.L. Ch. 111F, SS 7 and the regulations contained in 441 CMR SS 21.05. Failure to submit an MSDS and/or label on each container will place the vendor in noncompliance with the purchase order. Failure to furnish MSDSs and/or labels on each container may result in civil or criminal penalties, including bid debarment and action to prevent the vendor from selling said substances or mixtures containing said substances within the Commonwealth. All vendors furnishing substances or mixtures subject to Chapter 111F of the M.G.L. are cautioned to obtain and read the law and rules and regulations referred to above. Copies can be obtained from the State House Book Store, Secretary of State, State House, Room 117, Boston, MA 02133, (617-727-2834) for \$2.00 plus \$.65 postage.

17. In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

**FAILURE TO COMPLY WITH THESE TERMS AND CONDITIONS COULD RESULT IN THE
CANCELLATION OF YOUR CONTRACT.**

END OF SECTION

CONTRACT FORMS

The awarded bidder will be required to complete and submit the following documents in order to execute a contract pursuant to this proposal.

The forms are provided for informational purposes only.

None of the following forms are required at the time of proposal submittal.

CITY - CONTRACTOR AGREEMENT

CONTRACT NO. ____

THIS AGREEMENT made this ____ day of ____ in the year Two Thousand and Eleven by and between the CITY OF NEWTON, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the CITY, acting through its Chief Procurement Officer, but without personal liability to him, and hereinafter referred to as the CONTRACTOR.

The parties hereto for the considerations hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to furnish and to deliver to the City at such times, at such place or places, in such manner, and in such quantities as the City may direct, and at the unit prices quoted in the Contractor's proposal the following item or items:

FLEXIBLE SPENDING ACCOUNT ADMINISTRATION

- II. CONTRACT DOCUMENTS.** The Contract Documents consist of the following documents, which are either attached to this Agreement or are incorporated herein by reference:

- a. This CITY-CONTRACTOR Agreement;
- b. The City's Request for Proposal #12-20 issued by the Purchasing Department;
- c. The Project Manual for Supply and Deliver **Flexible Spending Account Plan Administration** including Specifications, and if included or referenced therein, any Standard Terms and Conditions, Special Conditions, Drawings or Descriptive Materials;
- d. Addenda Number(s) ____;
- e. The Proposal Response of the CONTRACTOR submitted for this Project and accompanying documents and certifications;
- f. Certificate(s) of Insurance and surety bond(s), if any, submitted by the CONTRACTOR in connection with this Project;
- g. Duly authorized and executed Amendments, Change Orders or Work Orders issued by the CITY after execution of this CITY-CONTRACTOR Agreement.

This CITY-CONTRACTOR Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the CITY and the CONTRACTOR.

- III. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this CITY -CONTRACTOR Agreement and the Project Manual, the terms of this Agreement shall prevail.

- IV. APPLICABLE STATUTES.** All applicable federal, state and local laws and regulations are incorporated herein by reference and the Contractor agrees to comply with same.

- V. **CONTRACT TERM.** The term of this contract shall **extend January 1, 2012 through December 31, 2012**. The City shall have the option, at its sole discretion to renew this Contract for two (2) additional one (1) year terms, with no change in the Contract price or conditions. Total payments under this contract shall not exceed \$ _____ unless the contract total has been increased by a duly executed change order. The City reserves the right to terminate this contract prior to the expiration date in the event total expenditures reach the above stated contract total. It is further understood that in the event the term of this contract extends beyond June 30 in any calendar year, the City reserves the right to terminate the contract if funding for its continuance is not appropriated in the succeeding fiscal year commencing July 1.
- VI. **QUANTITIES.** The quantities specified in the Project Manual are approximate and are based on previous consumption. It is specifically understood the City does not agree to purchase any specific quantity, and purchases will be made to cover actual requirements only. The City may increase or decrease the quantity of any item specified without change in price per unit of quantity as stated in the Contractor's Proposal Response.
- VII. **MATERIALS.** The Contractor agrees, unless otherwise specified, that all equipment, materials and supplies furnished under this contract are to be first quality, new and unused.
- VIII. **AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not constitute a notice to proceed or authorization to perform work or make deliveries. No work shall be commenced or deliveries made unless authorized by a written Work Order issued by the City specifying the equipment, materials or supplies to be delivered. The Contractor will be paid following completed delivery and acceptance of the equipment, materials or supplies ordered in accordance with the Contract. The City will use best efforts to pay within thirty (30) days of receipt of an invoice for the delivered equipment, materials or supplies or acceptance of same whichever date is later.
- IX. **CLAIMS FOR MATERIALS OR LABOR.** In the event any claims have been filed with the City for material or labor delivered or performed pursuant to this contract, the City shall be under no obligation to make any payment until such claims are adjusted to the satisfaction of the City. Any and all liens for supplies may be paid off by the City within twenty (20) days after the filing for record as provided by law of a notice of such liens, except where the claim on which the lien is filed is being litigated by the Contractor, and in such case the City may pay the amount of any final judgment or decree on any such claim. All money paid by the City in settlement of liens and claims as aforesaid, with the costs and expenses incurred by the City in connection therewith shall be charged to the Seller, bearing interest at the rate of six percent (6%) per annum, and be deducted from the next payment falling due the Seller under the terms of this contract.
- X. **UNIT PRICES.** It is agreed that the unit prices listed are maximum prices and that the City shall be entitled to take advantage of any decreasing market conditions, decreases to be governed by the manufacturers' price listing as might be generally adopted in the trade, or by the same percentage that the Seller may reduce prices to others who purchase in similar quantities and under similar conditions.
- XI. **RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** In the performance of any work, including the delivery of equipment, materials or supplies, pursuant to this Contract, the Contractor shall take all responsibility for the work, and shall take all precautions for preventing injuries to persons and property in or about the work and shall defend, indemnify and hold the City harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The Contractor shall be responsible for any damage, which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do.
- XII. **WARRANTY.** Except as may be otherwise provided in the Project Manual, the Contractor shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of equipment, materials or supplies furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Contractor.
- XIII. **PATENT INDEMNIFICATION.** The Contractor agrees to assume the defense of and shall indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Contractor, within a reasonable time, shall at its own expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.

- XIV. INSPECTION.** For the purposes of inspection of the equipment, materials and supplies covered by this contract, the Contractor shall give the City free access to his works and furnish every facility for properly inspecting such equipment, materials and supplies, and shall furnish full information, whenever requested, relating thereto. Approval by any inspector of the City shall not relieve the Contractor from his obligation to comply in all respects with the contract.
- XV. ASSIGNMENT/SUB-CONTRACTING.** The Contractor agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the City.
- XVI. INSTALLATION.** If any of the equipment, materials and supplies covered by this contract is to be installed by either the Contractor or the City, the Contractor shall, upon request of the City, furnish a competent employee to supervise the installation without expense to the City, unless otherwise provided herein. Such supervisor, or other employees furnished by the Contractor, shall be the agents of the Contractor and not of the City, and the Contractor hereby agrees to indemnify the City and hold it harmless from and against any and all loss, costs, damage, and expense sustained as the result of negligence or other conduct on the part of such supervisor or employee.
- XVII. TERMINATION.** The City of Newton may, by written notice of default to the Contractor, terminate the whole or any part of this Contract or any Work or Purchase Order issued pursuant thereto in any one of the following circumstances:
- a. If the Contractor fails to make delivery of the equipment, goods or supplies or to perform the services within the time specified herein or any extension thereof;
 - b. If the Contractor fails to perform any of the other provisions of this contract or, if in the opinion of the City, Contractor so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not correct such failure within thirty (30) days (or such longer period as the City may authorize in writing) after receipt of notice from the City specifying such failure.
- XVIII. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- XIX. SEVERABILITY.** The provisions of this Contract are severable. If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Contract.
- XX. AMENDMENTS TO THIS CONTRACT.** This Contract may not be amended except in writing executed in the same manner as this CITY-CONTRACTOR Agreement.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

CONTRACTOR

CITY OF NEWTON

By _____
Print Name _____
Title _____
Date _____

By _____
Chief Procurement Officer
Date _____

By _____
Director Human Resources
Date _____

Affix Corp Seal Here

Approved as to Legal Form and Character

City funds in the amount of _____
are available in account number:

01 109 01 5301 _____

By _____
Associate City Solicitor
Date _____

I further certify that the Mayor, or his designee,
is authorized to execute contracts and approve
change orders.

CONTRACT AND BONDS APPROVED

By _____
Comptroller of Accounts

Date _____

By _____
Mayor or his designee

Date _____

CERTIFICATE OF AUTHORITY – CORPORATE

1. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)
2. corporation, and that _____
(insert the name of officer who signed the **contract and bonds.**)
3. is the duly elected _____
(insert the title of the officer in line 2)
4. of said corporation, and that on _____
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____ *AFFIX CORPORATE*
(Signature of **Clerk or Secretary**)* *SEAL HERE*
7. Name: _____
(Please print or type name in line 6)*
8. Date: _____
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds.**)

* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.*

**Signature of Individual
or Corporate Contractor (Mandatory)

*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

By: _____
Corporate Officer
(Mandatory, if applicable)

Date: _____

* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.